

## BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION

STATE OF FLORIDA

CASE NO. SC10-348

INQUIRY CONCERNING A JUDGE,  
NO. 09-524, JUDGE DALE D.  
COHEN

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LAW OFFICES  
600 SOUTH ANDREWS AVENUE  
ROOM 600  
FORT LAUDERDALE, FLORIDA  
Monday, June 28, 2010  
3:05 p.m.

DEPOSITION OF STEPHEN MELNICK

Taken before RHONDA BONNER, Registered  
Professional Reporter, Notary Public in and for the State  
of Florida at Large, pursuant to Notice of Taking  
Deposition.

*Heaving  
Panel  
Ex FD #1*

## 1 APPEARANCES:

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F. WALLACE POPE, JR., ESQUIRE  
JOHNSON, POPE, BOKOR, RUPPEL & BURNS, LLP  
911 CHESTNUT STREET  
CLEARWATER, FLORIDA 33756  
ON BEHALF OF THE JUDICIAL QUALIFICATIONS  
COMMISSION.

MICHAEL CATALANO, ESQUIRE  
MICHAEL A. CATALANO, P.A.  
1531 NORTHWEST 13TH COURT  
MIAMI, FLORIDA  
ON BEHALF OF THE JUDGE DALE D. COHEN.

I N D E X

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EXAMINATIONS

PAGE

STEPHEN MELNICK

DIRECT EXAMINATION BY MR. CATALANO

4

1 THEREUPON:

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STEPHEN MELNICK

3 was called as a witness and, after having been first duly  
4 sworn, was examined and testified as follows:

5

DIRECT EXAMINATION

6 BY MR. CATALANO:

7 Q. Would you please state your name and occupation.

8 A. Stephen Alan Melnick, M-E-L-N-I-C-K. I'm an  
9 attorney.

10 Q. Tell me about undergraduate, where you went, what  
11 year; and then in law school, where you went and when did  
12 you graduate.

13 A. Undergraduate, University of Miami, graduated in  
14 1977. Grad school, University of Miami, graduated 1979.  
15 Broward Police Academy, graduated 1980. Law school,  
16 graduated 1988, Nova.

17 Q. And you're sworn in '88 or '89?

18 A. '88, 89.

19 Q. Approximately. Good enough.

20 A. Yeah.

21 Q. Did you pass the Bar the first time?

22 A. Yes, I did.

23 Q. Good for you. Okay.

24 A. '89.

25 Q. Do you speak any foreign languages?

1 A. None.

2 Q. Just English?

3 A. Just English.

4 Q. Tell me about your law career. You became -- you  
5 got sworn in.

6 Were you a police officer at the time or you just  
7 left the police?

8 A. I'm trying to remember. I was sworn in in 1989,  
9 and I worked for a civil firm in Lantana part-time, Frank  
10 Wethers. Then I went to work for the City of Fort  
11 Lauderdale as a municipal prosecutor. I then worked for  
12 the City of Boca as a police legal advisor. I've been in  
13 private practice now since 1997.

14 I interned in the PD's office also in '87, '88,  
15 somewhere in that range.

16 Q. For Schreiber?

17 A. Yes.

18 Q. When did you start the practice you're in now?

19 A. 1997.

20 Q. By yourself?

21 A. Yes.

22 Q. Have you always been by yourself?

23 A. Yes.

24 Q. Where is your office?

25 A. 629 Southeast 5th Avenue, Fort Lauderdale, 33301.

1 Q. Do you own the building?

2 A. Yes, I do.

3 Q. Right over there?

4 A. Yes.

5 Q. Okay.

6 When did you buy that building?

7 A. Maybe seven, eight years ago.

8 Q. And are you a member of any criminal defense  
9 lawyers organizations?

10 A. Broward Association of Criminal Defense Lawyers.

11 Q. How about national?

12 A. No.

13 Q. How about Florida?

14 A. No.

15 Q. Are you a member of the ABA?

16 A. No.

17 Q. Any other organizations? Broward Bar  
18 Association?

19 A. No.

20 Q. ACLU? Anything?

21 A. No.

22 Q. That's the only organization you pay due to?

23 A. Yes.

24 Oh, Florida Bar and Washington D.C. Bar.

25 Q. Okay. But you've got to pay the Florida Bar or

1 you wouldn't be sitting here.

2 A. Yeah.

3 Q. How did you first learn criminal defense work?  
4 From your experience as a police officer and police legal  
5 advisor, is that how you got into it?

6 A. Yes.

7 Q. How long were you a cop?

8 A. Full-time, approximately six -- a little over six  
9 years, and I worked as a police officer part-time while in  
10 law school for three years.

11 Q. When did you give up your standards? Or did they  
12 lapse or what?

13 A. They lapsed because I was under the old system.  
14 So it lapsed maybe in '90 or '91. I can't remember  
15 exactly.

16 Q. And since then you have not been sworn to any  
17 police officers agency?

18 A. Correct.

19 Q. What police department did you leave, the last  
20 one?

21 A. That I was a sworn officer was North Lauderdale.

22 Q. Did you leave on good terms?

23 A. Yes, I did.

24 Q. You were honorable -- you were an honorable  
25 police officer; you weren't discharged, or fired, or

1 anything like that?

2 A. No.

3 Q. Have you ever had a Bar complaint against you  
4 filed, whether it was sustained or not?

5 MR. POPE: Well, let me interject  
6 something. If probable cause was found,  
7 confidentiality is out the window. Unless  
8 probable cause was found, that's  
9 confidential. I don't mind you answering in  
10 the abstract, but...

11 MR. CATALANO: With all due respect,  
12 you're not his lawyer, you're only counsel  
13 for JQC.

14 MR. POPE: Absolutely.

15 THE WITNESS: I've had no probable cause  
16 filed against any violations.

17 BY MR. CATALANO:

18 Q. Ever?

19 A. Ever.

20 Q. Have you ever had them where probable cause  
21 wasn't found?

22 A. Yes, I have.

23 Q. About how many?

24 A. I do criminal defense work --

25 Q. Me, too. I know how it is.



1       A.    -- and as usual, they get -- they write the  
2 letters.  I've had maybe two or three.  I'm not sure.

3       Q.    Did you ever do court-appointment work?

4       A.    SPD?

5       Q.    Yes.

6       A.    Yes.

7       Q.    Are you still doing it?

8       A.    Yes.

9       Q.    And what's that -- right now we have PD conflict  
10 office --

11      A.    Right.

12      Q.    -- so business is slower for those cases because  
13 there's less of them.

14           Do you still get those cases?

15      A.    Yes, I do.

16      Q.    And do you have -- is it done by a wheel up here  
17 or random?

18      A.    Yes, it is.

19      Q.    I don't want to mess with your practice, but I  
20 want to get a feel for it.

21           About how many files of open criminal cases do  
22 you think you have in any particular time going?

23      A.    Felony and/or misdemeanor and traffic tickets?  
24 How do you want to break it up?

25      Q.    No, felony.  Let's do felony first.  Open, not on

1 probation. You know, they're in court pending disposition  
2 of some kind. Approximately, what's your average?

3 A. Maybe 50, 60.

4 Q. It's a lot; isn't it?

5 A. Yes.

6 Q. How about misdemeanors?

7 A. It's up and down. Maybe 40.

8 Q. Okay.

9 And do you do ticket infractions?

10 A. Yes, sporadic.

11 Q. When do you sleep? Almost never, huh?

12 A. Never.

13 Q. Do you do any civil or administrative stuff?

14 A. No.

15 Q. Do you do those hearings at DHSMV?

16 A. No, I don't.

17 Q. You never do them?

18 A. Never.

19 Q. So when a client comes to you with a DUI, you  
20 farm out motor vehicle?

21 A. Yes.

22 Q. Who do you farm it out to?

23 A. God, I forgot -- I blanked on her name. Either  
24 Monica Sherman or -- I haven't sent one to Monica. I  
25 forgot the other girl's name. I have her on speed dial in

1 the fax. Whenever I get them, I just fax them to her.

2 Q. And they pay you or they charge the client  
3 directly?

4 A. They charge me and I pay them directly.

5 Q. Okay.

6 About how many DUIs do you average a year?

7 A. Five.

8 Q. So you're not one of the heavy hitters?

9 A. Not on DUIs, no.

10 Q. Of course now you probably have a whole bunch of  
11 clients right now on probation, right? At least 20 or 30?

12 A. As far as -- it's hard to explain.

13 Q. We don't keep track of them that much --

14 A. I have no idea.

15 Q. -- but they violate sometimes, don't they?

16 A. Yes, they do.

17 Q. And then sometimes we charge them to have to  
18 solve that problem, too?

19 A. Sometimes they come back; other times they go to  
20 other lawyers.

21 Q. We've all been there.

22 A. Yes.

23 Q. And so you kind of have a basic criminal defense  
24 practice, right?

25 A. Yes.

1 Q. Do you do any federal?

2 A. No.

3 Q. Not at all?

4 A. One federal trial.

5 Q. Are you licensed and authorized to try cases in  
6 federal court?

7 A. Yes, I am.

8 Q. Have you ever done any appeals?

9 A. One appeal.

10 Q. And how about writs of certiorari, writs of  
11 prohibition?

12 A. No.

13 Q. Have you filed a writ of prohibition?

14 A. No.

15 Q. Have you ever filed a writ of certiorari?

16 A. Never.

17 Q. How about quo warranto?

18 A. Don't even know what it is.

19 MR. POPE: Do you even know how to  
20 pronounce that.

21 BY MR. CATALANO:

22 Q. How about mandamus?

23 I just filed one, so I had to learn the hard way.

24 Okay. But you know basically what extraordinary  
25 writs are, right?

1 A. I do and I don't.

2 Q. Okay.

3 So you're not an appellate lawyer at all?

4 A. Absolutely not.

5 Q. So if they got an appeal, you send them to  
6 someone else?

7 A. Yes.

8 Q. Who do you send them to?

9 A. I've sent them to Russell Williams. The  
10 majority, I'll send to Russell.

11 Q. He does appeals?

12 A. He does appeals.

13 Q. Okay.

14 Did you ever do any lawsuits? You ever sue  
15 anybody?

16 A. Civil rights -- I did civil rights. I did five  
17 of those.

18 Q. And that's because people got fired or  
19 terminated?

20 A. No, 1983 litigation.

21 Q. Where people got hurt?

22 A. No, it was false arrest.

23 Q. Oh, false arrest. You've done a handful of  
24 those?

25 A. I've done five trials.

1 Q. All in state court?

2 A. No, four in state, one in federal.

3 Q. That was your one federal case?

4 A. Yes, it was.

5 Q. So you've never tried a federal criminal case?

6 A. No, I haven't.

7 Q. Okay.

8 Have you ever taught any CLEs?

9 A. Never.

10 Q. But you attend them, right?

11 A. Yes, I do.

12 Q. Okay.

13 Do you have any -- were you board certified or  
14 any specialty training with the Bar?

15 A. No.

16 Q. Okay.

17 Have you all kept your dues paid on time and  
18 stayed current?

19 A. Yes.

20 Q. So basically you run a mom-and-pop criminal  
21 defense practice; kind of like I do, but more clients.

22 Okay.

23 Do you advertise for clients?

24 A. No.

25 Q. All your clients are referrals?

1 A. Yes.

2 Q. You have a website?

3 A. No.

4 Q. And do you list yourself anywhere?

5 A. No.

6 Q. Just the yellow pages, I imagine, right?

7 A. I don't think so. I don't pay for any ad.

8 Q. Do you have any arrangements with other lawyers  
9 that refer you cases?

10 A. No.

11 Q. And right, on average, right this year and last  
12 year, about how many court-appointed or speciality cases  
13 do you average a year? I know business is down, but --

14 A. It's actually more this year because conflict  
15 counsel, as they're in existence, they will eventually  
16 conflict themselves out because of the returns.

17 Right now, I have probably five open conflict  
18 cases right now that are open. In 2010, I closed maybe 15  
19 or 20, I'm guessing. In 2009, I don't know. I have them  
20 -- records.

21 Q. Let's talk about clothes and do the fashion  
22 police up front because there are issues here about your  
23 dress.

24 A. Yes.

25 Q. Nothing personal; you look fine to me. But I'm a

1 Miami and Broward lawyer. In Miami, you wouldn't dare  
2 walk into a courthouse or a courtroom in front of a judge  
3 without a tie and a jacket.

4 Do you do cases in Miami or just Broward?

5 A. No.

6 Q. Do you do Palm Beach?

7 A. No.

8 Q. Just Broward?

9 A. Just Broward.

10 Q. In the last five years, you have not stepped foot  
11 in a Dade County courthouse?

12 A. No, I haven't.

13 Q. How about Palm Beach?

14 A. Five years, no, I haven't.

15 Q. Anywhere else?

16 A. Just Broward.

17 Q. You're a local guy?

18 A. Yes.

19 Q. Is there a written rule or unwritten -- is it  
20 just an unwritten rule you don't have to have a tie in  
21 Broward?

22 A. I don't know.

23 Q. How often do you wear a tie for court  
24 appearances?

25 A. Trial. For trials for Judge Lazarus and for



1 Judge Stanton Kaplan.

2 Q. Because with those two, if you don't wear a tie,  
3 they throw you out, right?

4 A. No. It's -- Judge Kaplan, I've known him a very  
5 long time. And at the beginning, when I first started, I  
6 came, and my tie was loose. And he called me up and he  
7 said, "I'm old school. I would like you to please wear a  
8 tie, wear it properly in my courtroom." And same with  
9 Judge Lazarus, I've known him forever, and he said the  
10 same thing. And they're the only ones. So for their  
11 courtrooms, I always wear a tie always all the way up. I  
12 wear a suit for the two of them.

13 Q. And you're always -- jury trials, you always wear  
14 a suit?

15 A. Always.

16 Q. Now, we spend -- we defense lawyers, we spend  
17 most of our time doing something other than jury trials,  
18 right?

19 A. Yes.

20 Q. And that's running from courtroom to courtroom,  
21 doing all the motions, arraignments, and calendar calls  
22 and the basic grunt work; right?

23 A. Yes.

24 Q. What percent of time do you wear a tie for that  
25 kind of stuff?

1 A. Five percent.

2 Q. Rarely, right?

3 A. Correct.

4 Q. Now, in Miami, unless you've got a broken foot,  
5 if you wear sneakers, white sneakers to court, you get  
6 screamed at, even though judges wear them under the robes.

7 Do you ever see that?

8 A. No.

9 Q. Up here, you can wear sneakers in court, can't  
10 you?

11 A. Yes.

12 Q. You can wear jeans, too, can't you?

13 A. Yes, I do.

14 Q. So you can actually go to court in jeans,  
15 sneakers and a polo shirt in Broward County, right?

16 A. As far as I know, yes. I've seen it.

17 Q. You have done that, too, haven't you?

18 A. Not a polo shirt.

19 Q. You wear a shirt with a collar?

20 A. Correct.

21 Q. Like you're wearing now?

22 A. No jeans.

23 Q. Never wear jeans?

24 A. No. I don't like the fit of jeans.

25 Q. You wear cargo pants?

1 A. Yes, I do.

2 Q. Clearly, they're not formal attire, right?

3 A. Correct.

4 Q. You're a casual guy, correct?

5 A. Correct.

6 Q. Okay.

7 Let's talk about Dale Cohen. First, just your  
8 relationship. When do you think you first met him? When  
9 he was a defense lawyer?

10 A. I guess, yeah.

11 Q. Do you remember him has a prosecutor?

12 A. No.

13 Q. And -- but you remember him as a defense lawyer?

14 A. I remember him as a defense lawyer, yes.

15 Q. Did you have any dealings or were they just,  
16 hello, how are you, and next?

17 A. It was basically -- yeah.

18 Q. No bad feelings or good feelings?

19 A. Correct.

20 Q. Okay.

21 But you were always courteous to him?

22 A. Yes.

23 Q. Was Dale always courteous to you when he was a  
24 defense lawyer?

25 A. Yeah.

1 Q. Now, a couple years ago, he got appointed  
2 judgeship; you know that, right?

3 A. Yes.

4 Q. And they put him in criminal right way, didn't  
5 they?

6 A. I really don't know. I don't remember.

7 Q. Now, in Broward, we have in circuit court about  
8 nine or ten judges in criminal division?

9 A. More.

10 Q. Probably 15?

11 A. Probably about 20 at least.

12 Q. Yeah, many.

13 A. Because you've got each four, five, six, and  
14 seven.

15 Q. Dale Cohen got put into the old Weinstein  
16 division, right? Do you remember this?

17 A. I don't know the -- remember the who went where  
18 and when.

19 Q. You know how it is; sometimes you walk in and  
20 they tell you the judge has changed. You have no control  
21 over it, right?

22 A. Correct.

23 Q. All of a sudden, Dale had cases right away  
24 that -- Dale moved into a division where you already had  
25 cases, right?

1 A. Yeah.

2 Q. Okay.

3 And then more clients came along, and you had  
4 other cases that happened to be in that division, right?

5 A. Yes.

6 Q. At that time, you also had clients pending in  
7 almost all the other divisions, too, right?

8 A. Yes.

9 Q. Just circuit court, right?

10 A. Yes.

11 Q. County court is a whole different world, right?

12 A. Yes.

13 Q. Except Lazarus, who was always doing trials,  
14 right?

15 A. Yes.

16 Q. But you agree Lazarus is not a division, he's a  
17 guy that will take a case to trial to help out a circuit  
18 judge, right?

19 A. Yes.

20 Q. And you also have cases in drug court with that  
21 nice lady, Judge Beach, right?

22 A. Yes, lots.

23 Q. Lots?

24 A. Lots.

25 Q. Now, we're just talking about knowing people.

1 Did you ever socialize with Dale Cohen?

2 A. No.

3 Q. Did you ever sit down and have lunch with him?

4 A. Never.

5 Q. Sit next to him at a meeting, or party, or  
6 anything?

7 A. I don't go to parties.

8 Q. I don't want to go into your religious  
9 preferences, but they're Jewish. You're not a member --

10 A. I'm Jewish.

11 Q. You are Jewish?

12 A. Yes.

13 Q. You're not a member of the same religious  
14 organization?

15 A. No.

16 Q. Do you know Judge Terri Ann Miller? And she's in  
17 south satellite.

18 A. I met her. And when she ran for election, I sent  
19 her a check and asked her if she needed any help, you  
20 know. I remember that when she was a criminal defense  
21 attorney, she was always pleasant to talk to. And she had  
22 asked, you know, if I'd be -- the last time she ran, when  
23 was that, 2008?

24 Q. She ran a couple of times.

25 A. Yeah, the one she won.

1 Q. So you met her throughout that process?

2 A. Yeah.

3 Q. And now, did you ever -- outside of court, ever  
4 have any bad words, ill feelings, arguments with Dale  
5 Cohen?

6 A. No.

7 Q. Okay.

8 Now, before we get to court, let's talk about  
9 Mardi Levey Cohen, who happens to be Dale's wife, right?

10 A. Yeah.

11 Q. You just saw her walk out of here a minute ago,  
12 right?

13 A. Yes.

14 Q. How did you meet her; when she was a prosecutor?

15 A. Yes.

16 Q. Did you meet her when she was a supervisor or  
17 just a regular --

18 A. Regular.

19 Q. Did you also remember her being supervisor in  
20 county court for a long time?

21 A. There have been so many, I don't -- I don't know.  
22 You know, I know she was, but I don't know how long.

23 Q. Did you have any problems with her when she was  
24 in county court?

25 A. No problem.

1 Q. Ill-will, bad feelings, arguments?

2 A. No.

3 Q. Do you remember basically just bumping into her  
4 on cases?

5 A. That was it.

6 Q. Did you ever try a jury trial when Mardi was a  
7 prosecutor?

8 A. No.

9 Q. How about Dale?

10 A. No.

11 Q. So then, now, Mardi -- I mean, Mardi moves to  
12 circuit, because eventually, we all go there.

13 Did you ever have any cases with her in circuit  
14 court?

15 A. Yes, I did.

16 Q. Did you ever have any problems, bad words, or ill  
17 feelings?

18 A. No.

19 Q. It was all professional?

20 A. Yes.

21 Q. So the first time Mardi ran for judge, you  
22 actually gave her a check for 100 bucks, right?

23 A. Yes. And we put her signs in our office and put  
24 signs for her at our house.

25 Q. You actually did put signs up for her?



1 A. Yes.

2 Q. Did you tell her or you just did it as -- to be  
3 nice?

4 A. She asked me. And I said sure.

5 Q. This was about four years ago, five, six?

6 A. 2006, I'm thinking.

7 Q. Long time ago?

8 A. Yes.

9 Q. And who was she running against that time?

10 A. Marina Garcia Wood.

11 Q. Any particular reason you picked Cohen versus  
12 Wood?

13 A. I didn't know Marina, and Mardi had asked, and I  
14 said sure.

15 Q. Was Mardi always nice to you?

16 A. Yeah. I had no problems.

17 Q. Okay.

18 So -- and Mardi lost the election?

19 A. Yes.

20 Q. Okay.

21 So now we move toward. Now, Mardi went into  
22 private practice right around there because Dale became a  
23 judge and she had to take over his caseload.

24 Do you remember that?

25 A. I'm guessing. I don't know their personal

1 business.

2 Q. Did you ever work any cases with Mardi?

3 A. No.

4 Q. You know, sometimes you're co-defendants.

5 A. Never.

6 Q. Okay.

7 So, then, what's your next dealing with Mardi?

8 When the election came up with Pedro Dijols?

9 A. Yes.

10 Q. Now, up to the point where we're at the election

11 where Pedro, Bernie Bober and Mardi are all running for

12 the same job, Pedro is the sitting judge, right?

13 A. Yes.

14 Q. Were you friends with Pedro?

15 A. Yes, I was.

16 Q. You got along well with him?

17 A. He was renting space in our building when we

18 purchased it, so...

19 Q. Like one of your guys in your office?

20 A. Yes.

21 Q. This is after he left the state attorney, right?

22 A. Yes.

23 Q. This is after he prosecuted for obscenity in a

24 song, right?

25 A. Yes. 2 Live Crew.

1 Q. 2 Live Crew.

2 Okay. When he left the State Attorney's Office,  
3 he went into private practice and he rented space from  
4 you?

5 A. No. We purchased that building from Bo Hitchcock  
6 and Jerry Cunningham. He was one of the tenants in there  
7 with Samuel Lopez and somebody Commander, Commando, I  
8 don't know the other person's name.

9 Q. So you ended up kind of bumping into each other a  
10 lot?

11 A. Yes.

12 Q. You became -- did you become friends with Pedro?

13 A. Yes, I did.

14 Q. When you campaigned for Pedro and helped him out,  
15 did you get static or attitude from people, saying he's  
16 not nice, he was mean?

17 A. Yes.

18 Q. You know Pedro can rub people wrong, can't he?

19 A. Everybody can.

20 Q. No, I'm talking about more than normal.

21 A. I've never seen it. I was in his courtroom a  
22 lot, and I dealt with him, you know, on campaign stuff,  
23 and I never -- I never saw it.

24 Q. Now, the election just a couple years earlier,  
25 you supported Mardi. And -- I understand that this is

1 like making sausage, it all gets thrown in and it comes  
2 out. Who is going to run against who, those decisions for  
3 some of these judgeships made right at the day of  
4 qualifying, don't they?

5 A. Yes.

6 Q. And it drives everyone crazy, doesn't it?

7 A. Yes.

8 Q. Doesn't it drive you crazy when two of your  
9 friends run against each other?

10 A. Yes.

11 Q. It happens, right?

12 A. Yes.

13 Q. And it puts us in an uncomfortable position,  
14 doesn't it?

15 A. That's life.

16 Q. That's life.

17 So when you found out that -- by the way, did you  
18 know Bernie Bober?

19 A. I knew him when he was in the P.D., but I  
20 wasn't -- he was an attorney that I dealt with, but he  
21 wasn't a friend or an acquaintance. He was just somebody  
22 who walked by and I said hello to.

23 Q. Bernie was nice, wasn't he?

24 A. I guess. I really didn't know him.

25 Q. So there came a time -- obviously, you knew Pedro

1 pretty well. he's right there. I had people who rented  
2 from me or were in my office, so you become friends.

3 So did you ever, when you decided to support  
4 Pedro, for obvious reasons, did you call Mardi up and say,  
5 Hey, I know I supported you last time, but I've got a  
6 problem here?

7 A. No.

8 Q. It's just you helped him, correct?

9 A. Correct.

10 Q. Were you listed as a campaign person on Bernie's  
11 campaign? You know those papers that --

12 A. Not Bernie's.

13 Q. Not Bernie, Pedro. Pedro Dijols. Did you file  
14 anything with any Department of Elections or all that?

15 A. No, I didn't.

16 Q. Nothing?

17 A. No.

18 Q. Are you aware how those campaigns work where they  
19 have forms they have to fill out?

20 A. Yes and no.

21 Q. You're not -- you don't like to --

22 A. I wasn't the campaign treasurer.

23 Q. Just a helper, right?

24 A. His -- our office is where he ran his campaign  
25 out of, him and Catalina Avalos. So everything, all mail

1 and everything, we dealt with there. He brought in  
2 everything. We did all the election list mailers from  
3 there. We put all the signs together. We sat and planned  
4 meetings on strategies of where we're going here, where  
5 we're going there. But being officially listed as like --  
6 or claiming I'm the campaign manager, no, I wasn't.

7 Q. Or treasurer?

8 A. No, I was not.

9 Q. Did you have signatory power on any of the  
10 campaign accounts?

11 A. No, I did not.

12 Q. So you were a helper, not an official signs  
13 person on any form, right?

14 A. Correct.

15 Q. And you, of course, supported him and endorsed  
16 him?

17 A. Correct.

18 Q. So now you're campaigning and helping him. And  
19 I've been down there, we all know what you've got to do,  
20 you go out and shake hands and tell your friends to please  
21 help.

22 But there came a time, apparently, there was a  
23 phone call that Mardi called you something about on the  
24 blog?

25 A. Yes.

1 Q. Now, let's stop here a second. Do you know Bill  
2 Gelin very well?

3 A. I know him, yes, I do.

4 Q. You've got to admit, since he started that blog,  
5 he's really shaken things up in this county, hasn't he?

6 A. I'm presuming he has.

7 Q. It's fun, you know, to watch; isn't it?

8 A. Sometimes yes, sometimes no. It can be very  
9 destructive and negative. And the idea -- free speech is  
10 fine, but I don't agree with the ideas of personal  
11 attacks.

12 Q. Without signing it, right?

13 A. No, not even -- even if you sign it, there's no  
14 need -- if you have something where you don't like a  
15 person, if you don't like a member of the judiciary or  
16 another lawyer, there's no reason to personally attack  
17 them and call them names and do things like that. It's  
18 just juvenile. And that's -- that I see as a major  
19 drawback from a blog where you're supposed to -- like you  
20 can express ideas, but it's not meant, I don't believe, to  
21 tear people down.

22 Q. Okay.

23 Now, apparently, there was something -- did you  
24 post something on the blog about a fundraiser?

25 A. Bill Gelin, how it works is --

1 Q. Tell me how that happened.

2 A. We're doing it for like Carlos Robello on Friday.

3 What we do is I contact Bill --

4 Q. By e-mail?

5 A. Or phone or text message. And I say, Bill, we're  
6 doing a fundraiser for so-and-so at our office, please  
7 post it on the blog.

8 I do the same thing with Barry Buton on the  
9 BACDL. So he sends an e-mail out, blast all members of  
10 the BACDL.

11 Q. To tell people there's a fundraiser?

12 A. Fundraiser here at our office at such-and-such a  
13 time.

14 Q. Now, apparently, there was something -- there was  
15 some language in there that said "reelect," right?

16 A. The original verbiage was, "Reelect Pedro  
17 Dijols."

18 Q. Who typed of the verbiage "reelect"?

19 A. I don't know if I did or Bill. I don't remember.

20 Q. And you know now that that would have been a  
21 mistake because you got to say "retain" or "keep"?

22 A. Correct.

23 Q. I've been through this for other judges --

24 A. I know. With Terry.

25 Q. -- and you have got follow the rules, right?



1 A. Correct.

2 Q. So it was clearly a mistake made by you or Gelin?

3 A. It was -- if I'm the one doing the fundraiser,  
4 it's my fault.

5 Q. Right.

6 And you're aware of the judges, if they get  
7 elected, or the candidate that loses can get in trouble  
8 with the JQC, the Florida Elections Commission, the  
9 Broward Commission for Fair Campaign, whatever, whatever,  
10 and all these different do-gooders that are trying to make  
11 the world safer for democracy, are you aware that the  
12 judge or the candidate himself gets trouble for your  
13 well-intended mistake?

14 A. Yes.

15 Q. Okay.

16 So are you aware that the solution is to  
17 immediately say, "Whoops, mistake," fix it, and tell  
18 everyone?

19 A. And it was done. The blog corrected it and  
20 changed it.

21 Q. But did Mardi call you before you fixed it, or  
22 was Mardi the first one to tell you, whoops, it was a  
23 mistake?

24 A. Mardi called me up and threatened me and was  
25 nasty, loud --

1 Q. But was she first?

2 A. She was -- within minutes of it being posted on  
3 the blog, the call came from her. So probably within two  
4 to three minutes of being posted on the blog, because  
5 Marlene Dijols was setting in my office with me and we  
6 were --

7 Q. That's Pedro's Dijols' wife?

8 A. Yes.

9 We were planning the fundraiser. And as soon as  
10 it went up, I remember it was up, and then seconds later  
11 the phone rang and it was Mardi.

12 Q. So Mardi was first?

13 A. Mardi was first.

14 Q. Okay.

15 And so did you agree after hearing that, that  
16 there was a mistake that had to be corrected?

17 A. I didn't know enough about it, but I was  
18 presuming that it was probably wrong. I called up whoever  
19 was running the blog, whether it would be Jeff Ivashuk --  
20 which, correcting my memory, I think Jeff Ivashuk was  
21 actually doing the blog postings then, not Bill Gelin.

22 And I called up Bill and/or Jeff and said it  
23 needs to be changed, and it was changed within like two  
24 minutes later. So it may have been changed before anybody  
25 else even saw it.

1 Q. But the whole legal issue about "retain" versus  
2 "reelect" really didn't seem to mean much at that time?

3 A. Correct.

4 Q. Because you weren't in that business, correct?

5 A. Correct.

6 Q. But the candidates all know this because it's  
7 drilled in their head not to do that because you meet  
8 Mr. Pope if you do it and you stand by it and then you end  
9 up, because it's a JQC if you get elected. Are you aware  
10 now it's a JQC problem?

11 A. I am now.

12 Q. Because you can't be a judge and break campaign  
13 rules and win without possibly having a complaint filed by  
14 the JQC. Are you aware of that?

15 A. Now I am.

16 Q. Okay.

17 And you're aware of the other organizations, like  
18 the Florida Election Commission and Broward Campaign  
19 Advisory Committee, whatever?

20 A. Never dealt with them.

21 Q. I have. It's no fun at all.

22 Okay.

23 So let's talk about the phone call. Mardi called  
24 you, right?

25 A. Yes.

1 Q. Now, is this the first time Mardi ever got in an  
2 argument with you?

3 A. Yes.

4 Q. Okay.

5 And tell us exactly what you remember she said.

6 A. I remember her loudly yelling through the phone,  
7 and I remember her saying to me, "You'll be sorry. You're  
8 making a big mistake."

9 She told me about the language. I remember her  
10 saying, it can't say "reelect" it has to say "retain."

11 Q. Or "keep"?

12 A. She never said "keep".

13 Q. She said "retain"?

14 A. Yes, clearly.

15 And then something -- I don't remember the rest  
16 of the words, but I remember, "You'll be sorry and you're  
17 making a big mistake" and then hung up.

18 Q. She hung up or she ended the conversation?

19 A. I don't know the difference. It was click, so...

20 Q. What did you say?

21 A. I didn't know -- from what -- I don't remember  
22 word for word what I said, but either "I don't know" or  
23 "I'll take care of it," and that was it. I didn't get  
24 much of a chance to speak.

25 Q. You did immediately do something about it?

1 A. Immediately.

2 Q. Okay.

3 Now, at that moment -- at that moment, Dale was a  
4 judge, right?

5 A. Yeah, I'm guessing, yes.

6 Q. You had cases in his division?

7 A. Yes.

8 Q. At that moment --

9 A. Truthfully, I really don't remember. I may not  
10 have. I don't remember where I had -- because sometimes I  
11 don't always have cases in every judge's division.

12 Q. I know, but you have a bunch -- statistically,  
13 you probably had one or two?

14 A. Not necessarily. Like right now I have none in  
15 Judge Imperato, absolutely none there, and absolutely zero  
16 in Judge Towbin Singer's out of, say, 50, 60 cases. A  
17 majority of mine now are all either in Destry, or Lynch,  
18 or Levenson. It just cyclical.

19 Q. Yeah. And it's also luck of the draw, right?

20 A. Yes.

21 Q. I know that, too.

22 (Thereupon, a brief recess was taken @

23 4:18 p.m.)

24 BY MR. CATALANO:

25 Q. Sir, now, back to Dale Cohen. When was the first

1 time you filed a recusal motion for Judge Dale Cohen?

2 A. I believe it may have been in November. And from  
3 the best of my memory, it may have been somebody named  
4 Kevin Rigby. Kevin was a regular client of mine. I know  
5 Kevin had a case in there and his name sprung to the head  
6 and I just looked it up on the computer.

7 Q. Let's talk about Dale Cohen. Is Dale Cohen a  
8 judge that would give a, in your perception, a stiffer or  
9 stronger sentence than some others?

10 A. I really don't notice that. I'm in and out. I  
11 never had a trial in front of him, so I don't know if  
12 there was trial tax imposed. I just -- it wasn't Judge  
13 Barry Goldston who everybody --

14 Q. Right. I know that if you went to trial, you got  
15 the maximum.

16 A. Even on a plea, you had followed by.

17 Q. And same with Judge Alemon, remember?

18 A. Yeah, I know.

19 Q. And how about Judge Levenson?

20 A. I've had no problem with him, you know. As far  
21 as that, he's up and down.

22 Q. You don't mind the fact that he sets you for  
23 trial in one month and expects you to be ready?

24 A. No.

25 Q. You learn to move fast, don't you?

1 A. I do. I wear sneakers.

2 Q. Judge Cohen, though, gave you the time to do the  
3 job, right?

4 A. I really don't truthfully remember timewise how  
5 things were given there, because Judge Weinstein,  
6 everything lasted forever, so I really don't remember what  
7 Judge Cohen --

8 Q. Do you remember Judge Cohen rushing you or  
9 pushing you?

10 A. No.

11 Q. Would you agree with me that Buzz Lightyear would  
12 definitely have to be Judge Levenson. He's one of all the  
13 people here that expects everything to be done faster than  
14 anybody else pretty much, right?

15 A. No. Judge Gates --

16 Q. Gates is faster?

17 A. -- Judge Imperato --

18 Q. Okay.

19 A. -- are both pretty quick.

20 Q. Do you remember Cohen ever rushing you or pushing  
21 you, something you thought was unreasonable like that  
22 tactic I've seen, be ready in one month after arraignment?

23 A. No.

24 Q. Would you agree with me, though, just about any  
25 felony judge that expects you within a month of

1 arraignment to be totally ready for trial is not just

2 nice? I said nice, not --

3 A. No, I can't make that assumption, because every  
4 fact situation is different. I can't say that somebody is  
5 not nice or somebody is this.

6 Q. Okay.

7 Do you have -- do you ever feel that Judge  
8 Levenson rushed you to get ready for trial?

9 A. No.

10 Q. Okay.

11 So that's the first time you moved for recusal?

12 A. To the best of my memory, yes.

13 Q. Tell me -- is it Rigby, right?

14 A. Yes.

15 Q. What was Rigby charged with?

16 A. I truthfully don't remember.

17 Q. Was he in custody? You said he got busted a lot  
18 of times, right?

19 A. He may have been. I really don't remember  
20 what -- I just remember he may have been my first recusal.

21 MR. POPE: Incidentally, that's JQC

22 Exhibit 6.

23 BY MR. CATALANO:

24 Q. Do you remember if Rigby is your first, why you  
25 filed it?



1       A.   I remember -- I felt that my client should be  
2 aware of what was going on -- or going on between Judge  
3 Cohen's wife and myself, that he needs to be made aware of  
4 the situation because it could have impacted something in  
5 his case.

6       Q.   Okay.

7           And you did have a conversation with Rigby about  
8 this?

9       A.   Yes, I did.

10      Q.   Did you tell him you had an opinion or did you  
11 just ask him what he thought?

12      A.   What I did is --

13      Q.   Tell me what happened.

14      A.   -- I, like the other ones, I told him that I  
15 worked for a candidate who lost -- who ran in the election  
16 against Judge Cohen's wife. There was words between her  
17 and I.

18      Q.   Did you tell him what the words were?

19      A.   No, I just said they were words between her and  
20 I, and that eventually there was a lawsuit and possibly --  
21 I didn't tell him about the Bar complaint and other things  
22 which were in the process which weren't done. And there  
23 was a lawsuit involved where I was involved with it. I  
24 wasn't the lawyer of record, but I was involved in the  
25 research with this and --

1 Q. I'm going to go into that in detail; but go  
2 ahead, then what?

3 A. And do you want me to file a recusal or do you  
4 want to stay in that judge; what do you want me to do?

5 Q. Okay.

6 Did you tell the client, Mr. Rigby, what would  
7 change if he went to a different judge?

8 A. No.

9 Q. Well, then, what's in it for the client if -- to  
10 move? Because you could end up worse, you know, right?

11 A. I don't know. The choice is theirs. I just  
12 explained that there was a conflict between the judge's  
13 wife and I that I felt that they needed to be made aware  
14 of.

15 Q. And what did Mr. Rigby say?

16 A. He said he'd like me to file the recusal motion.  
17 So the motion was then typed up. He read it. I read it  
18 with him. And I said this is the facts, do you want me to  
19 file this motion? He said yes. They signed it. It's  
20 notarized. I sign it. My signature is notarized. Then  
21 it was filed.

22 Q. Okay.

23 Now, before this motion, Rigby, which you said is  
24 your first Dale Cohen recusal --

25 A. To the best of my memory.

1 Q. -- about how many motions for recusal do you  
2 think you filed in your career?

3 A. I don't think -- maybe one with Stanton Kaplan,  
4 and that was at the client's request.

5 Q. Because something happened between the judge and  
6 the client?

7 A. Yes.

8 Q. What was that?

9 A. I don't remember.

10 Q. Because, you know you can't fool around with that  
11 guy or kid around with him, right?

12 A. I really liked him and I really enjoyed  
13 practicing in front of him.

14 Q. But he was a very quiet, strict kind of guy;  
15 wasn't he?

16 A. No, he had a very good sense of humor. If you  
17 understood his sense of humor, he had a very good one.

18 Q. Okay.

19 That was just one particular case, right?

20 A. To the best of my memory, yes.

21 Q. Now, on this Rigby -- and Mr. Pope has given me a  
22 copy of the Rigby -- you just filed it once, right?

23 A. If he had two cases or one, I don't remember.

24 Q. Right. If somebody has three cases pending and  
25 you move to recuse, you file the same exact motion for all

1 three?

2 A. I would have them sign, yes, all three.

3 Q. That way there's one in each file, right?

4 A. Correct.

5 Q. Plus, let's face it, God forbid you recuse two  
6 out of three, you still have got to deal with it?

7 A. Yes.

8 Q. So that's the reason, the person has multiple  
9 cases, you move to recuse, there's no reason for that  
10 judge to be on one case; he should be all or none, right?

11 A. Yes.

12 Q. Okay.

13 Then what's the next one you filed?

14 A. I don't remember.

15 Q. But how many you think you filed with Dale  
16 Cohen's courtroom for recusal?

17 A. I don't know. Probably less than ten.

18 Q. Okay.

19 And all got granted, didn't they?

20 A. Eventually, yes.

21 Q. And let's talk about office practice for a second  
22 here. You know how at the clerk over here, how they love  
23 to play games and lose pleadings and tell you they didn't  
24 get them?

25 A. Yes.

1 Q. And we've all learned this: You have to  
2 hand-deliver and stamp in, don't you?

3 A. Yes.

4 Q. Do you -- I have a practice in my office in Miami  
5 that every written plea of not guilty and notice of  
6 appearance is hand-delivered to the clerk and the State  
7 because I don't trust those guys and don't want to hear  
8 later that "I didn't get it" game.

9 Do you agree with me?

10 A. With Miami, no, I don't know Miami.

11 Q. How about Broward, do you always hand-deliver?

12 A. Not always. Sometimes we mail.

13 Q. But you know if they don't get it and put it in  
14 the computer you could end up with a warrant at  
15 arraignment, right?

16 A. Yes.

17 Q. What is your practice, do you have a runner or am  
18 I looking at the runner?

19 A. I do some and my daughter is my secretary and she  
20 does the drop-offs also.

21 Q. Do you tend to make a trip every day or two at  
22 least?

23 A. Yes.

24 Q. And do you almost always file your pleadings with  
25 the clerk at the window?

1 A. Yes.

2 Q. The attorney window?

3 A. She does most of the drop-offs. I don't know  
4 where she files them. So she does it.

5 Q. You agree with me all pleadings and motions must  
6 be -- if you're going to deliver -- must be given a copy  
7 to the prosecutor, right?

8 A. Yes.

9 Q. Do you always give a copy of everything you file  
10 with the prosecutor?

11 A. Always.

12 Q. Always?

13 A. Up at the State Attorney's Office window always.

14 Q. That's on the 6th floor, right?

15 A. Yes.

16 Q. Of course now they split the County court to  
17 another room. Isn't it on seven or something?

18 A. Yes.

19 Q. For a long time, the entire State Attorney's  
20 Office would accept everything at that window accept a  
21 satellite court, right?

22 A. Yes.

23 Q. So every time on these motions, if you were to  
24 file the motion -- I know that some of these you filed in  
25 the actual courtroom, right?

1 A. Yes.

2 Q. The ones you filed at the Clerk's office you took  
3 to the window, or your daughter did?

4 A. Yes.

5 Q. And were they automatically -- the same then were  
6 also hand-delivered to the State?

7 A. Yes.

8 Q. Now, do you have that habit I have of giving the  
9 state attorney secretary behind the window and the clerk  
10 your copy to stamp in so you have proof?

11 A. No.

12 Q. You just give it to them?

13 A. Yes.

14 Q. And have you ever been in a situation where the  
15 clerk said they didn't get it or the state attorney said  
16 they didn't get it?

17 A. Yes.

18 Q. How do you prove that? By Certificate of  
19 Service?

20 A. It's just my word, that's all.

21 Q. Okay.

22 Have you ever in your career ever filed a  
23 pleading more than five days after you put on the date of  
24 Certificate of Service?

25 A. No.

1 Q. Okay.

2 Have you ever filed a pleading, like a motion to  
3 recuse or any motion, where you gave it to the clerk and  
4 did not give it to the state attorney?

5 A. No.

6 Q. Okay.

7 Have you ever had prosecutors tell you, "We  
8 didn't get it"?

9 A. Yes.

10 Q. You hear that all the time?

11 A. Yes.

12 Q. Have you ever had their court file people, the  
13 clerk, whatever, say "We didn't get it"?

14 A. No.

15 Q. And you do understand the importance of  
16 hand-delivery, right?

17 A. Yes.

18 Q. Especially if you're close to the date of the  
19 hearing, right?

20 A. Yes.

21 Q. Okay.

22 So if Gibbs -- not Gibbs -- if Rigby is the  
23 first, who is the second, third, fourth?

24 A. I don't know.

25 Q. But there came a time that you apparently went to



1 Judge Cohen's court and filed two or three of them all at  
2 the same time, right?

3 A. Truly, I don't remember.

4 Q. Let's talk about Gibbs.

5 A. Yes.

6 Q. Mr. Gibbs is a client of yours?

7 A. Was. Right.

8 Q. Was. Okay.

9 He hired you, right?

10 A. He called me from jail collect. His girlfriend  
11 came and paid me the retainer. I then went and visited  
12 Mr. Gibbs in jail.

13 Q. How much was the retainer?

14 A. I don't remember.

15 Q. Do you have records in your office?

16 A. I do, but they're all microfiched and sent off.

17 Q. Did he pay cash, or credit card, or check?

18 A. I truthfully don't remember.

19 Q. Did you ever tell Mr. Gibbs that hiring you would  
20 result in a recusal of Judge Cohen?

21 A. No.

22 Q. Did you ever tell Mr. Gibbs that hiring you would  
23 result in another judge handling his case?

24 A. No. What I explained to him -- I went to visit  
25 him in jail. I brought the recusal motion. I said, this

1 is the situation, and I told him the history; that there  
2 was a problem with -- between the judge's wife and I. If  
3 he wants, I could file this recusal; and if it's granted,  
4 you will get a new judge.

5 Q. Let's talk about Mr. Gibbs.

6 Mr. Gibbs was on probation from 2006, right?

7 A. Yes.

8 Q. With some other lawyer. I forgot who it was. Do  
9 you remember who?

10 A. I don't know. There are many.

11 Q. As is typical, we all know if you pick up a new  
12 felony while you're out on felony probation, almost sure  
13 as the sun comes up, you're going to be held to no bond;  
14 right?

15 A. Yes.

16 Q. Have you ever seen an exception?

17 A. Yes.

18 Q. Very rare, right?

19 A. Yes.

20 Q. Like when you had the wrong guy or it's a big  
21 mistake, right?

22 A. Unless it's a drug court case.

23 Q. Right.

24 But those are the people that have drug problems,  
25 right?

1 A. Yes.

2 Q. I'm talking about this guy picked up a felony  
3 fleeing --

4 A. Yes.

5 Q. -- and some other stupid charges while he was out  
6 on probation for stealing a bunch of money from the  
7 sheriff's office, right?

8 A. I don't know who was the victim; but, yes.

9 Q. It was a police department, I think.

10 A. I don't remember.

11 Q. Okay.

12 Did you ever look at the file, the reasons why he  
13 was put on probation?

14 A. It was -- from the best -- I looked back then; I  
15 don't remember now.

16 Q. Okay.

17 And were you aware that he owed the Government a  
18 lot of money for stealing from a police agency?

19 A. I remember that he owed a lot of restitution.

20 Q. The first thing -- one of the first things we  
21 like to discuss with those people is how are you doing  
22 with the payments, right?

23 A. Right.

24 Q. We all want to know because the judge is going to  
25 look at that instantly, right?

1 A. Yes.

2 Q. Was he pretty much up to snuff on that?

3 A. I don't remember.

4 Q. So when you went to jail, you already had the  
5 recusal motion in your hand?

6 A. Yes, I did.

7 Q. And you were retained by a relative?

8 A. His girlfriend.

9 Q. Did she speak English?

10 A. To the best of my memory, yes.

11 Q. Any foreign languages that you detected?

12 A. No.

13 Q. Okay.

14 Mr. Gibbs, does he speak any foreign languages?

15 A. I don't know.

16 Q. Is he black or white?

17 A. He's a black male.

18 Q. Did he look Haitian?

19 A. I don't know if Haitians look any different from  
20 any African American.

21 Q. Did he have a French accent?

22 A. No accent, to the best I can remember.

23 Q. You know, I know a lot of people from Haiti live  
24 in the US that have very little Creole accent, but you can  
25 almost tell, versus some of the black people you might

1 meet that have always lived in the United States.

2 A. He spoke fluent English.

3 Q. Okay.

4 Did you have any reason to think he was a  
5 foreigner or spoke any languages?

6 A. No.

7 Q. So when you met with Mr. Gibbs, you had the  
8 motion in your hands?

9 A. Yes, I did.

10 Q. And did you bring anyone with you to the jail?

11 A. Did I bring any what?

12 Q. Anybody with you. Assistants.

13 A. No.

14 Q. When you met with him, you already had been paid  
15 some money, right?

16 A. Correct.

17 Q. Do you have -- do you get these calls from jail  
18 that I get where people want you to come over and  
19 sometimes they have no money; they just want to waste your  
20 time?

21 A. Yes.

22 Q. Have you kind of made maybe an unwritten policy  
23 that you like to see some money from somebody before you  
24 go over?

25 A. It depends.

1 Q. On this one?

2 A. I had already been hired. I represented  
3 Mr. Gibbs in the past past.

4 Q. Before 2006?

5 A. Yes. And Mr. Gibbs' business partner I had also  
6 represented in the past past.

7 Q. Why didn't he hire you in 2006; do you know?

8 A. I don't know.

9 Q. See, I ask those questions, like, you know, why  
10 are you coming back to me now?

11 A. I don't.

12 Q. Okay.

13 And the -- you go to -- you go meet with him and  
14 he said he wanted to go forward and hire you, right?

15 A. Correct.

16 Q. Did you know -- did he know that he was on  
17 no-bond hold, stuck in jail?

18 A. Yes, he did.

19 Q. He did not like that at all, did he?

20 A. No, he didn't.

21 Q. I haven't had many clients that do, but they hate  
22 it when they're stuck no bond, don't they?

23 A. Yes.

24 Q. They don't like it when you tell them, "I'm  
25 sorry, until we work this out, you ain't going anywhere,"

1 right?

2 A. Yes.

3 Q. That's the way he was acting, right?

4 A. I truthfully don't remember.

5 Q. Did you ever tell him that hiring you and paying,  
6 you would result in getting rid of Judge Cohen?

7 A. No, not in those words.

8 Q. Did you tell him the likelihood of Judge Cohen  
9 granting the motion to recuse?

10 A. I said there's -- it's been granted in the past,  
11 and most likely he would grant this motion for recusal.

12 Q. Did you tell him what would happen with his case  
13 once he recused?

14 A. All I told him is we would be going before a new  
15 judge. Nothing else.

16 Q. And did he tell you that he heard some judges  
17 were better than others?

18 A. No, we didn't discuss who was better, who's  
19 worse, because you don't know where you're going to go.  
20 It's all -- when the recusal comes through, if you had a  
21 recusal with a judge, it can be a blind wheel; you can go  
22 to Judge Stanton Kaplan back then, you could have gone to  
23 anybody, so you don't know -- Judge Alemon, you could have  
24 gone to anybody. You don't know where you're going.

25 Q. And did you discuss that with him that there's

1 some judges that are extremely strict, as we might say?

2 A. I said -- I described in -- I described, from  
3 what I -- best of my memory, because this is what I did  
4 with every client, I told him, these are the criminal  
5 judges. I said -- I go through the list and say this is  
6 Judge Imperato, Judge So-and-So, Judge So-and-So, Judge  
7 So-and-So. And they would ask what are they like, and I'd  
8 say they're nice, they're polite, this one may be  
9 stricter, this one may be there, but I can't tell you  
10 what's going to happen with your case because the charges  
11 aren't filed yet.

12 Q. Okay.

13 And at the time you were hired by this man,  
14 Mr. Gibbs, did the State file the information yet?

15 A. No.

16 Q. So it was pending?

17 A. Yes.

18 Q. And what did you tell him about Judge Cohen?

19 A. I didn't say anything negative or positive. I  
20 described the recusal and the incident with his wife to  
21 him.

22 Q. Now, after incident with his wife, did you ever  
23 talk to -- I'm going to go off the subject for one second  
24 and come back.

25 Did you ever contact Judge Cohen and say, "Hey,



1 do we have a problem because I had an argument with your  
2 wife, or are we going to be okay in court?"

3 A. No.

4 Q. Have you ever done that in your life?

5 A. No.

6 Q. If you had, do you think Judge Cohen is the kind  
7 of guy that would have talked to you and would have been  
8 polite?

9 A. I don't know. I didn't know him away from here,  
10 and I didn't know him well enough that I could just go to  
11 him and say something like that.

12 Q. Back to Gibbs. So that's it for the conversation  
13 with Gibbs, right?

14 A. To the best of my memory, yes.

15 Q. You never put any seeds in his imagination or  
16 mind that he was buying himself out of that division by  
17 hiring you?

18 A. No, no guarantees.

19 Q. And you know why I'm asking these questions,  
20 right?

21 A. Yeah.

22 Q. It makes sense, doesn't it?

23 A. Yeah.

24 Q. Okay.

25 Then Mr. Gibbs, he was stuck in jail; so if he

1 wanted to call you, he had to call you collect?

2 A. Or three-way, correct.

3 Q. Which is a pain in the neck, right, because you  
4 have got to be in the office to take the call.

5 A. We wound up being transferred to Judge Gillespie.

6 Q. Back from Gillespie later, but you were off the  
7 case again, weren't you?

8 A. What happened, I had sent down a motion in Judge  
9 Gillespie -- I don't remember which motion, it's in the  
10 court file -- and when I showed up for that motion, Andrew  
11 Coffey was there.

12 Q. Andrew Coffey was the original lawyer on the 2006  
13 case? I think he was.

14 A. No.

15 Q. He wasn't?

16 A. No, he was not.

17 Q. Andrew took over?

18 A. Andrew showed up in court, and then Mr. Gibbs was  
19 asked who he wanted as his attorney. Andrew said that his  
20 girlfriend had come and paid Andrew because I wouldn't  
21 come and see Mr. Gibbs in jail. He called and want me to  
22 come one night, the best of my memory, and I wasn't  
23 dropping everything at that time to go and visit him. And  
24 then he hired Mr. Coffey. And we were in Judge  
25 Gillespie's, and Mr. Gibbs said on the record, "I want

1 Mr. Coffey, not Mr. Melnick." At which point in time, I  
2 withdrew. And then advised Judge Gillespie the reason,  
3 there was a recusal out of Judge Cohen's division, the  
4 case originated in Judge Cohen's, and the conflict was  
5 possibly with myself, not Mr. Gibbs. And I believe  
6 pursuant to the rules of judicial -- Broward rules, the  
7 case would need to go back to Judge Cohen. And Mr. Coffey  
8 was aware of this. And then the case was transferred back  
9 to Judge Cohen and Mr. Gibbs wound up getting out.

10 Q. And working out a plea, right?

11 A. Correct.

12 Q. But how long were you on that case?

13 A. I don't remember the timeframe.

14 Q. Did you actually get the chance to even do  
15 anything or do you think --

16 A. What happened is Penn Farrington was the state on  
17 the VOP --

18 Q. Old case?

19 A. On the old case. And I had talked to Penn  
20 preliminarily whether he was going to even file the  
21 charges, because he was looking at filing the -- they were  
22 making him file the fleeing case, from what I remember.  
23 And trying to see if we can work something out and get him  
24 out while the new charge was still pending so he could pay  
25 restitution. And Penn said, "I don't know what I want to

1 do; I haven't decided if I'm going to file or not."

2           So we had had a few talks, Penn and I. And then  
3 I had set the case down before Judge Gillespie to see if  
4 we could get him released because of the restitution and  
5 that's when Andrew Coffey showed up.

6       Q. Did you ever tell Penn that you had an automatic  
7 blanket recusal with Judge Cohen?

8       A. No.

9       Q. Did you ever tell Penn anything about the Fourth  
10 DCA saying that you have an automatic or permanent  
11 recusal?

12      A. No.

13      Q. And you did have conversations with Penn, right?

14      A. Yes, I did.

15      Q. Penn, is he retired now? I don't know the guy  
16 well, but I think he retired.

17           Have you seen him lately?

18      A. I don't see anybody away from the courthouse.

19      Q. Okay.

20           Now, Penn, he was the prosecutor in 2006.

21           Were you aware that he was some kind of economic  
22 crimes guy?

23      A. Yes, he was.

24      Q. Okay. And he got stuck with making the filing  
25 decision on the new case because he had the original VOP?

1 A. To the best of my memory, yes, it was.

2 Q. Okay.

3 And I read the arrest report --

4 A. Yeah.

5 Q. -- and it seems it was a stupid fleeing case;  
6 wasn't it?

7 A. I truthfully don't remember.

8 Q. Do you remember it being kind of like hardly a  
9 fleeing case?

10 A. I really don't remember.

11 Q. But there were other charges as well. Do you  
12 remember that?

13 A. No, I don't remember.

14 Q. So you were negotiating with Penn to try to work  
15 out something; hopefully, number one, to get the client  
16 out, right?

17 A. Yes.

18 Q. Did you collect any more fee, or is it just the  
19 one-shot deal?

20 A. No, just the retainer.

21 Q. You don't remember how much?

22 A. No, I don't.

23 Q. Do you have a base that you want to accept from  
24 people before you enter an appearance?

25 A. It varies.

1 Q. It does with me, too, but I'm wondering, some  
2 people have a feel that before I do this, I want at least  
3 a grand.

4 A. No. It varies. If they're return business,  
5 sometimes it's less than others. It just varies. It  
6 varies on my financial situation at that time.

7 Q. Okay.

8 So you walk in and all of a sudden there's  
9 another lawyer there. The client says, "I want the other  
10 guy."

11 Did the sister, whatever, did she ask for any  
12 money back?

13 A. No.

14 Q. Did the defendant ever ask for money back?

15 A. No.

16 Q. So you were just basically discharged, right?

17 A. Right.

18 Q. That's the last you saw of the case?

19 A. Correct.

20 Q. Did you know of any law at that time that said  
21 that once a judge grants a recusal or disqualification he  
22 or she is permanently barred from messing with that case  
23 again?

24 A. No.

25 Q. You didn't know about that?

1 A. No.

2 Q. You thought judicially it should have gone back?

3 A. Correct.

4 Q. Were you there when Gillespie sent it back?

5 A. Yes.

6 Q. So, now you knew it was going back, but you  
7 didn't follow up what happened, right?

8 A. Correct.

9 Q. And then that other man, Mr. Coffey, handled the  
10 case?

11 A. Yes.

12 Q. Did you have hear back from Coffey?

13 A. Yes, I did.

14 Q. What did you hear?

15 A. I heard after Gibbs -- or when Gibbs was being  
16 sentenced, that Judge Cohen -- Andrew Coffey called me  
17 that day and said the strangest thing happened. Judge  
18 Cohen started questioning Gibbs about you, meaning me and  
19 my conversations with Mr. Gibbs. And Andrew said it was a  
20 strangest thing he's ever seen, and he just wanted to let  
21 me know what happened.

22 Q. What was so strange about it?

23 A. It was to Andrew about how that the judge was  
24 questioning Mr. Gibbs about me, who was discharged and no  
25 longer his lawyer, with the recusal or our conversations,

1 something along that line.

2 Q. But you realize that when that case went back,  
3 Judge Cohen has a file in front of him where recused  
4 himself in the past, right?

5 A. Yes.

6 Q. And If you were a Judge, wouldn't you want to ask  
7 the guy, "Are you sure you want me? You asked for recusal  
8 before."

9 A. I don't know. I'm not a judge.

10 Q. Anything else that Mr. Coffey said?

11 A. No.

12 Q. Okay.

13 Did you ever -- since that day that you walked  
14 out of court and you were discharged by Mr. Gibbs, have  
15 you spoken to him since that day?

16 A. No.

17 Q. No contact at all?

18 A. None.

19 Q. Okay.

20 And have you spoken to Mr. Coffey about this  
21 again?

22 A. I've run into Andrew.

23 Q. About this, though?

24 A. He's discussed it, yes, how it felt strange that  
25 day.



1 Q. What else has he said?

2 A. That's about it.

3 Q. Just to straighten this out right from the  
4 beginning, you did not file a complaint with JQC, right?

5 A. Correct.

6 Q. Okay.

7 And we'll go into this later, but you're not the  
8 one that initiated this case to bring us here today,  
9 right?

10 A. Correct.

11 Q. Thank you.

12 You don't wish any ill-will on Dale Cohen, do  
13 you?

14 A. That's not for me to decide.

15 Q. How do you feel? I can ask you in a depo, how do  
16 you feel?

17 A. I don't know.

18 Q. Do you want him punished?

19 A. That's not up to me; that's up to the JQC what  
20 they do.

21 Q. What do you want?

22 A. I don't have an opinion. It's up to them. I  
23 don't make those decisions. I can't get -- even think  
24 about that because I'm not the complainant.

25 Q. Okay.

1           Let's go back to Mardi. Mardi is running again  
2 for a third time --

3       A.    Yes.

4       Q.    -- against two people I don't know.

5       A.    Jahra McLawrence and Nathaniel Klitsberg.

6       Q.    Do you know them?

7       A.    I know Jahra McLawrence since he was in the  
8 P.D.'s office, and I've known him around. Nathaniel  
9 Klitsberg, I wouldn't know if he was sitting here.

10      Q.    Are you involved in this one at all?

11      A.    No.

12      Q.    Have you supported anybody?

13      A.    Haven't given a dime to either.

14      Q.    Right now, are you the campaign manager or  
15 treasurer for anybody?

16      A.    No.

17      Q.    Have you ever been the campaign manager or  
18 treasurer for anyone running a campaign?

19      A.    No.

20      Q.    Even dog catcher?

21      A.    Never.

22      Q.    Smart man, right?

23           MR. POPE: Smarter all the time.

24 BY MR. CATALANO:

25      Q.    But you'll help people with campaigns if they're

1 friends or you like them, right?

2 A. Correct.

3 Q. Nothing wrong with that.

4 A. Correct.

5 Q. Okay. So, we've discussed Gibbs.

6 Now, apparently there was another guy. There was  
7 another defendant that you filed a motion where there was  
8 a hearing as well?

9 A. Leon Butler.

10 Q. Okay.

11 So let's go back to the Gibbs -- we're going to  
12 go to the Gibbs hearing now, and then we'll go to Butler.  
13 We're going to be here a while, sorry, but I want to get  
14 this done today. Warm up your shoes.

15 A. We have -- no, we have -- my wife signed us up  
16 and we have dance lessons at 7:30 at Arthur Murray.

17 Q. I think you're going to make it. I'll have you  
18 there.

19 Let's talk about the Gibbs hearing, the big Gibbs  
20 hearings.

21 Have you seen the transcript of that?

22 A. Yes, I have.

23 Q. When did you see it? On the blog or did the JQC  
24 give it to you? How did you get it?

25 A. Truthfully, I really don't remember.

1 Q. You walked in that day in the morning calendar,  
2 right?

3 A. I was called to the courtroom by the prosecutor  
4 who said that Judge Cohen wants you here. And, okay.

5 Q. Was the motion already filed?

6 A. Yes.

7 Q. Okay.

8 And I mean, was that without any warning, or did  
9 you know there was a calendar call or something?

10 A. It was without a warning that he wanted me in  
11 there.

12 Q. So the case was not set that day for anything?

13 A. No, it may have been; I really don't remember. I  
14 filed my recusal motions, and I remember getting a phone  
15 call from Florence Taylor at that time and said, "Judge  
16 Cohen wants you here right away." This was before lunch.

17 Q. Were you able to go?

18 A. So I dropped everything. I was in my office, I'm  
19 a block away, and went over there.

20 Q. Did you say to Florence, "Yeah, I can be there,  
21 no problem"?

22 A. I'm on my way.

23 Q. You didn't object?

24 A. No.

25 Q. But you were not on a calendar call, a status

1 conference?

2 A. I don't remember what it was.

3 Q. Okay.

4 So you show up in the court. And was the court  
5 busy or quiet?

6 A. There was a hearing going on. And I sat down  
7 where the lawyers sit, you know, in front.

8 Q. In front of the box?

9 A. Yes. And I sat there and waited?

10 Q. Okay.

11 But how many other defendants and citizens were  
12 in the courtroom, a lot or a little?

13 A. There were people there. I don't remember how  
14 many.

15 Q. Because you know how to walk into some courts and  
16 you know you're going to be a long time because there's a  
17 mob scene and others you walk in and there's almost nobody  
18 and you know you're going to get out fast, you have that  
19 feeling?

20 A. I don't remember. I don't remember.

21 Q. What happened? Was your client there?

22 A. My client was sitting in a box.

23 Q. Did you talk to him?

24 A. Yes, I did.

25 Q. What did you tell him?

1 A. I don't remember.

2 Q. What did he say?

3 A. I don't remember.

4 Q. So he's in custody in cuffs?

5 A. Yes.

6 Q. And you're there. So what happened? They call  
7 the case? What happened?

8 A. I remembered Judge Cohen's wife coming in, and I  
9 thought we were going to -- I didn't know why he wanted me  
10 there. And then I remember him say, "Mardi, let's go to  
11 lunch," and he broke for lunch and he left me sitting  
12 there. And I said to Flo, "What's this about?" She gave  
13 me a shoulder shrug; she didn't know.

14 Q. Did the Court tell everyone to come back at a  
15 particular time?

16 A. I believe we were told to come back either 1:00  
17 or 1:30, I don't remember exactly which time, and I came  
18 back.

19 Q. Then you went to lunch and --

20 A. I went back to my office. I walked back.

21 Q. You did whatever you had to do, right?

22 A. Yes.

23 Q. You know you had to go back?

24 A. Correct.

25 Q. Did you have any conversation with your client